IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

WP(C).No. 20084 of 2004(N)

PETITIONER:

MOHAMED ISMAHEEL, S/O.S.M.MOHAMED BASHEER,
AGED 40 YEARS, T.C. 32/1561,
KANNANKULANGARA, KOORKANCHERRY VILLAGE AND
DESOM, THRISSUR TALUK, THRISSUR-7.

BY ADV. SRI.DENIZEN KOMATH,
SMT.SHAIMA .U.,
SRI.P.M.JAWAHARLAL.

RESPONDENTS:
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1. **COMMISSIONER OF EXCISE,**
   THIRUVANANTHAPURAM.

2. **ASSISTANT EXCISE COMMISSIONER,**
   THRISSUR.

3. **M/S.HOTEL MERLIN INTERNATIONAL,**
   REPRESENTED BY ITS MANAGING DIRECTOR,
   THRISSUR-4.

BY ADV. SRI.C.C.THOMAS,
GOVERNMENT PLEADER.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.20084/2004-N:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE COMPLAINT PREFERRED BY THE PETITIONER BEFORE THE THE R.2. DTD. 03/08/2002.

EXT.P.2: COPY OF THE JUDGMENT PASSED BY THE HONOURABLE HIGH COURT, IN O.P. NO. 24658/02 DTD. 02/09/2002.

EXT.P.3: COPY OF THE REPORT OF THE R.2. DTD. 12/12/2002.

EXT.P.4: COPY OF THE STATUTORY APPEAL PREFERRED BY THE PETITIONER BEFORE THE R.1. DTD. 03/01/2003.

EXT.P.4.A: COPY OF THE POSTAL RECEIPT F THE EXHIBIT P.4. STATUTORY APPEAL.

RESPONDENT'S EXHIBIT:

EXT.R3.A: COPY OF THE JUDGMENT DTD. 26/07/2002 IN O.P. NO. 17987/2002 OF THIS HONOURABLE COURT.

//TRUE COPY//

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.20084 of 2004-N

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Dated this the 13th day of December, 2007.

JUDGMENT

1.The third respondent has a Three Star Hotel with an FL-3 licence. A writ petition was filed in public interest by one P.L.Jacob asserting a distance rule and contending that the distance between the gate of the Three Star Hotel and a mosque is less than 200 meters. The District Collector physically verified the distance and found it to be 276 meters. By Ext.R3(a) judgment, Division Bench dismissed that writ petition holding that there is no substance in the complaint. That was on 26th July, 2002, i.e., one month after the grant of the licence.

2.Thereafter, the petitioner made a complaint by stating that he is the President of a masjid

where a new mosque is also being constructed. He was relegated by this Court, for a hearing by the competent authority.

3. Ext.P3 has been issued thereafter, clearly stating, among other things, that the centre and the sheds which were pointed out by the petitioner had come up after the licence was issued. Reference was also made to Ext.R3(a) judgment of this Court. Having gone through Ext.P3 order and Ext.P3(a) judgment, I am satisfied that the matter should have ended, at least, there.

4. Instead, the petitioner filed, what he calls, an appeal and he has filed this writ petition seeking a direction to dispose of that.

5. Firstly, no appeal is provided against a decision in the nature of Ext.P3. Secondly, the facts of this case do not inspire the issuance of any writ of mandamus or any other writ, direction or order

of any sort commanding the consideration or re-consideration of the case.

6.I am satisfied that this is a case where the banner of religion has been unnecessarily abused. Religion with reason makes man. If the reasons stated in Ext.P3 and the findings of this Court in Ext.R3(a) judgment on the basis of the report of the District Collector could not supply wisdom, the petitioner should have obtained appropriate guidance.

The writ petition fails. The same is accordingly dismissed. Though I am inclined to issue an order for appropriate costs against the petitioner, I refrain from doing so.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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